

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 504

Introduced by Senator Berryhill

February 21, 2013

An act to amend Section 43003 of the Food and Agricultural Code, relating to fruit, nut, and vegetable standards.

LEGISLATIVE COUNSEL'S DIGEST

SB 504, as amended, Berryhill. Fruit, nut, and vegetable standards: civil penalties.

Existing law provides for the establishment and maintenance of minimum standards of quality and maturity for fruits, nuts, and vegetables, as specified, and authorizes the Secretary of Food and Agriculture or the County Agricultural Commissioner, in lieu of civil prosecution, to levy a civil penalty against a person for a violation of the laws or regulations relating to fruit, nut, and vegetable standards. Existing law requires the person charged with the violation to be given notice and an opportunity to be heard, and authorizes the person to appeal to the secretary within 10 days of the date of receiving notification of the fine, in accordance with specified procedures.

This bill would authorize the commissioner, or his or her representative, to file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any decision of the secretary, or his or her representative, rendered on an appeal from the commissioner's decision, and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 43003 of the Food and Agricultural Code
2 is amended to read:

3 43003. (a) In lieu of civil prosecution, the secretary or the
4 commissioner may levy a civil penalty against any person violating
5 this division or any regulation adopted pursuant to its provisions.
6 Except as provided in subdivisions (b) and (c), the civil penalty
7 for each violation shall be, for a first violation, a fine of not more
8 than five hundred dollars (\$500). For a second or subsequent
9 violation, the fine shall be not less than one hundred dollars (\$100),
10 nor more than one thousand dollars (\$1,000).

11 (b) The secretary or the commissioner may, for a first violation,
12 levy a civil penalty not to exceed three thousand dollars (\$3,000)
13 for each violation of Section 42945, 42948, 42949, 42951,
14 subdivision (b) of Section 44971, Section 44972, subdivision (c)
15 of Section 44974, or Section 44986.

16 (c) The secretary or the commissioner may, for a first violation,
17 levy a civil penalty not to exceed five hundred dollars (\$500) for
18 each violation of Section 44973, 44982, 44983, 44984, 45031,
19 45034, or 45035. For a second or subsequent violation, or for a
20 violation involving avocados worth five hundred dollars (\$500)
21 or more, the fine shall be not less than two hundred fifty dollars
22 (\$250) nor more than five thousand dollars (\$5,000).

23 (d) Before a civil penalty is levied, the person charged with the
24 violation shall receive notice of the nature of the violation and
25 shall be given an opportunity to be heard. This shall include the
26 right to review the evidence and a right to present evidence on his
27 or her own behalf.

28 (e) The person fined may appeal to the secretary within 10 days
29 of the date of receiving notification of the fine. The following
30 procedures apply to the appeal:

31 (1) The appeal need not be formal, but it shall be in writing and
32 signed by the appellant or his or her authorized agent, and shall
33 state the grounds for the appeal.

34 (2) Any party may, at the time of filing the appeal or within 10
35 days thereafter, present written evidence and a written argument
36 to the secretary.

37 (3) The secretary may grant oral arguments upon application
38 made at the time written arguments are filed.

1 (4) If an application to present an oral argument is granted,
2 written notice of the time and place for the oral argument shall be
3 given at least 10 days before the date set therefor. The times may
4 be altered by mutual agreement.

5 (5) The secretary shall decide the appeal on any oral or written
6 argument, briefs, and evidence that he or she has received.

7 (6) The secretary shall render a written decision within 45 days
8 of the date of appeal or within 15 days of the date of oral
9 arguments.

10 (7) On an appeal pursuant to this section, the secretary may
11 sustain, modify by reducing the amount of the fine, or reverse the
12 decision of the commissioner. A copy of the secretary's decision
13 shall be delivered or mailed to the appellant and the commissioner.

14 (8) Review of the decision of the secretary may be sought by
15 the appellant pursuant to Section 1094.5 of the Code of Civil
16 Procedure.

17 (f) After the exhaustion of the appeal and review procedures
18 provided in this section, the commissioner, or his or her
19 representative, may file a certified copy of a final decision of the
20 commissioner that directs the payment of a civil penalty and, if
21 applicable, a copy of any decision of the secretary, or his or her
22 representative, rendered on an appeal from the commissioner's
23 decision, and a copy of any order that denies a petition for a writ
24 of administrative mandamus, with the clerk of the superior court
25 of any county. Judgment shall be entered immediately by the clerk
26 in conformity with the decision or order. ~~The Pursuant to Section~~
27 ~~6103 of the Government Code, the~~ clerk of the superior court shall
28 not charge a fee for the performance of any official service required
29 in connection with the entry of judgment pursuant to this section.